

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AMBAC ASSURANCE CORPORATION,	:	
	:	Index No. 08 Civ. 9464 (RMB) (THK)
Plaintiff,	:	
	:	DECLARATION OF PHILIP R.
- against -	:	FORLENZA IN SUPPORT OF
	:	AMBAC'S MOTION FOR LEAVE
EMC MORTGAGE CORPORATION,	:	TO FILE AMENDED COMPLAINT
	:	
Defendant.	:	

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PHILIP R. FORLENZA declares as follows:

1. I am a partner in the law firm of Patterson Belknap Webb & Tyler LLP, counsel for Plaintiff Ambac Assurance Corp. ("Ambac"). I am admitted to practice before the courts of this District and remain in good standing.

2. I submit this Declaration for the purpose of describing recent communications with counsel for Defendant EMC Mortgage Corporation ("EMC") and the Court regarding Ambac's proposed Amended Complaint.

3. I state the following information on the basis of personal knowledge.

4. By mid-June 2010, Ambac had deposed thirteen EMC witnesses, EMC had begun deposing Ambac witnesses, and the parties were in process of scheduling the remaining depositions.

5. On June 9, 2010, I telephoned EMC's counsel to inform EMC that Ambac, subject to consultation with the Office of the Commissioner of Insurance of the State of Wisconsin, would seek leave to amend its Complaint.

6. On June 13, 2010, I e-mailed EMC's counsel to ask whether EMC preferred to continue or suspend depositions in light of Ambac's intention to seek leave to amend the Complaint. A copy of my June 13 correspondence is attached hereto as **Exhibit 1**.

7. The next day, EMC responded that it preferred to continue with depositions of both EMC and Ambac witnesses. A copy of EMC's June 14 e-mail is attached hereto as **Exhibit 2**. Ambac agreed. Subsequently, the parties agreed that a reasonable extension of fact discovery from August 6, 2010 to September 30, 2010 would be adequate to complete depositions; and agreed to seek approval of that extension from Magistrate Judge Katz.

8. After further consideration, the parties agreed that it made sense to suspend all depositions until the parties could discuss the matter with Judge Katz. A copy of EMC's correspondence on this issues is attached hereto as **Exhibit 3**. On July 7, counsel conferred with Judge Katz, during which EMC took the position that all depositions should be suspended until Ambac's motion was decided.

9. Subsequently, within its July 6, 2010 status report to the Court, Ambac informed the Court that it would seek leave to amend the complaint to (1) add the Segregated Account of Ambac Assurance Corporation as a party-plaintiff; and (2) conform the pleadings to the evidence revealing additional claims against new defendants.

10. During the July 7, 2010 conference among the parties and the Court, EMC took the position that all discovery should be stayed until the Court ruled on Ambac's motion for leave to amend.

Executed at New York, New York this 28th day of July, 2010.


Philip R. Forlenza

EXHIBIT 1

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From: Forlenza, Philip R. (x2140) [mailto:prforlenza@pbwt.com]
Sent: Sunday, June 13, 2010 4:16 PM
To: Edlin, Richard A. (Shld-NY)
Cc: Haas, Erik (x2117); Sanchez, Karla G. (x2785); Forlenza, Philip R. (x2140)
Subject: Depositions in Ambac v EMC

Richard - As promised in our last call, we have given further thought to the issue of the impact on the continuation of depositions of Ambac's anticipated motion to amend the complaint. We do not want the motion to create any actual or perceived prejudice to EMC. Accordingly, please let me know EMC's preferences regarding whether to continue or suspend depositions; including how to avoid having to recall witnesses. Thanks.

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7/26/2010

EXHIBIT 2

Forlenza, Philip R. (x2140)

From: EDLINR@gtlaw.com
Sent: Monday, June 14, 2010 2:11 PM
To: Forlenza, Philip R. (x2140)
Cc: Haas, Erik (x2117); Sanchez, Karla G. (x2785); whitneye@gtlaw.com; Syme, Carrie (x2535)
Subject: RE: Depositions in Ambac v EMC
Follow Up Flag: Follow up
Flag Status: Green
Categories: Filed To Worksite

I suppose it will be up the the Court as it will by necessity be a part of your motion. The state of affairs is what it is. What would you think would be a reasonable extension, given that you know your witnesses schedules?

From: Forlenza, Philip R. (x2140) [mailto:prforlenza@pbwt.com]
Sent: Monday, June 14, 2010 11:42 AM
To: Edlin, Richard A. (Shld-NY)
Cc: Haas, Erik (x2117); Sanchez, Karla G. (x2785); Whitney, Eric N. (Shld-NY-LT); Syme, Carrie (x2535); Forlenza, Philip R. (x2140)
Subject: Re: Depositions in Ambac v EMC

Richard - I understand your position and preference. What do you propose in terms of protecting witnesses from being recalled if (as we anticipate) the motion to amend is granted notwithstanding EMC's opposition. Also, I confirm that an extension of the deadline is acceptable. Thanks

From: EDLINR@gtlaw.com
To: Forlenza, Philip R. (x2140)
Cc: Haas, Erik (x2117); Sanchez, Karla G. (x2785); whitneye@gtlaw.com
Sent: Mon Jun 14 11:34:21 2010
Subject: RE: Depositions in Ambac v EMC

Phil,
Thanks for you email. As we discussed on our last call, we would oppose any motions to amend the pleadings or to add parties. All of the facts necessary to identify parties and claims were well known to your client at the time the original complaint was filed and nothing new in terms of parties or claims has been uncovered during the deposition testimony, so we do not believe that any motion of the sort you have mentioned would be well-founded. Moreover, we are well along the way in finishing the EMC depositions, many of which have involved third parties. To answer your question, we want to finish the depositions of the EMC witnesses as well as finish taking the Ambac witnesses. With respect to the latter, again, as discussed, given the lack of dates provided so far, we would anticipate a reasonable extension of the existing schedule to accommodate the circumstances and I believe you said you had no issue with that. This does not constitute a full recitation of our position on the motion you mentioned, and any such response would have to await our receipt of the motion itself.
Please let me know how you wish to proceed.
Best,
Rich

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EXHIBIT 3

To: Goodstine, Sarah Levin (x2476)
Subject: FW: Ambac

FYI --

From: Haas, Erik (x2117)
Sent: Tuesday, June 29, 2010 4:12 PM
To: Parekh, Niraj (x2641)
Subject: FW: Ambac

We have a week or two to file. So this needs to be full press.

From: Forlenza, Philip R. (x2140)
Sent: Tuesday, June 29, 2010 4:11 PM
To: Haas, Erik (x2117); Tomlinson, Peter W. (x2977)
Subject: FW: Ambac

From: EDLINR@gtlaw.com [mailto:EDLINR@gtlaw.com]
Sent: Tuesday, June 29, 2010 3:20 PM
To: Forlenza, Philip R. (x2140); ksanchez@pbwt.com
Cc: whitneye@gtlaw.com
Subject: Ambac

Phil,

We've had a chance to discuss with our client and believe that the following is the proper course. I think that you should advise the Court immediately that you intend to file a motion seeking leave to amend your complaint. It is the single most schedule affecting issue at the moment and something that will drive other decisions. We think that it will serve all interests, including your own, for the Court to set a short time-frame for you to file your motion, say a week or two, and that time-frame will also assist your client in focusing on this issue. It makes little sense to be deposing witnesses in this period, so, again, a tight schedule for the motion practice helps everyone. We are available virtually anytime for such a call with Magistrate Katz. Please feel free to call me with any follow-up.

Thanks,

Rich

Richard A. Edlin
Shareholder
Greenberg Traurig, LLP | MetLife Building | 200 Park Avenue | New York, NY 10166
Tel 212.801.6528 | Fax 212.805.5528 | Cell 646.229.1122
edlinr@gtlaw.com | www.gtlaw.com



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